

II. Remarks

Claims 1-8 are pending in this case. Of these, claims 1-8 were rejected in the last Official Action (dated October 20, 2003) as being anticipated under 35 U.S.C. Section 102(e) by Laosunthara et al., U.S. Pat. No. 6,357,462 ("the '462 patent"); claims 1 and 3-8 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Nichols, U.S. Pat. No. 4,709,718 ("the '718 patent"); and claims 1-7 were rejected, also under 35 U.S.C. Section 102(b), as being anticipated by Jones, U.S. Pat. No. 6,010,176 ("the '176 patent"). For the reasons specified, Applicant respectfully disagrees.

With respect to the rejection of claims 1-5 over the '462 patent, Applicant claims as his invention an improvement in portable enclosures of the type having an enclosure exterior surface, the improvement comprising a covering removably *attachable to* the enclosure exterior surface, the covering bearing a first visible pattern on a first covering surface, and the covering adapted to surround and cover substantially all of the enclosure exterior surface.

In contrast, the '462 patent teaches a portable playpen including a cover (*see* FIGS. 6-7, reference number 40) which envelops the entire playpen structure, rather than being attachable thereto:

"Cover 40 includes an upper roof portion 42, a central portion 44, and a lower base portion 46...the bottom of cover 40 is provided with a preferably water-resistant or waterproof base portion 46. Base portion is *disposed between* base 20 and the ground when cover 40 *encloses* playpen 5." Col. 5, lines 26-56 (*emphasis added*).

Nor is there *any* teaching whatsoever in the '462 patent that the cover (40) includes a first visible pattern, as instantly claimed, and the examiner's assertion of

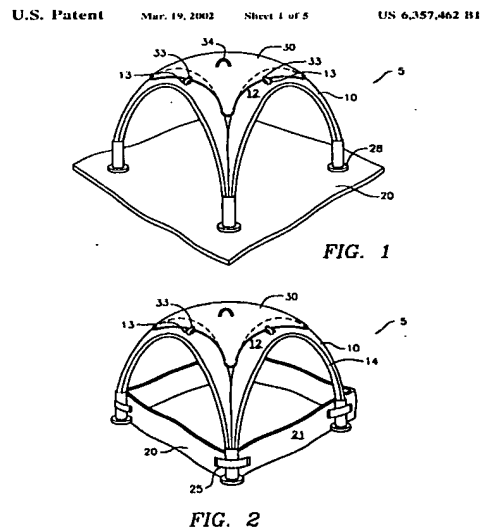
inherency in these regards is simply untenable. Inherency cannot be premised upon "probabilities or possibilities," Continental Can Co. v. Monsanto Co., 212 USPQ 323, 326 (CCPA 1981). On the contrary, the thing asserted to be inherent must be "necessarily present in the thing described in the reference, and...so recognized by persons of ordinary skill." In re Robertson, 49 USPQ2d 1949 (Fed. Cir. 1999). There has been no demonstration that the cover (40) of the '462 patent must *necessarily* bear a first visible pattern. The rejection is thus unsustainable.

Turning next to the rejection of claims 6 and 7, Applicant's invention comprises a portable enclosure including a collapsible frame, and a flexible covering removably *attached to* and substantially surrounding the frame to thereby define a walled enclosure, the flexible covering having an interior surface and an exterior surface bearing a first visible pattern.

The teaching of the '462 patent is again inapposite. In fact, the playpen structure of that reference teaches a plurality of walls (10) covered with fabric sheeting (12). *See, e.g., FIG. 3.* This fabric sheeting is *not* removably attached to the support bars (11) defining the frame of each wall (10). As to the roof (30), that element of the playpen of the '462 patent does not, as previously indicated, substantially surround the playpen structure, and it certainly does not define a walled enclosure, such as instantly claimed. *See, e.g., FIG. 2.* Nor does the cover (40) meet the limitations of the invention of claim 6. For, as indicated, that cover (40) does *not* bear "a first visible pattern." Moreover, the cover of the '462 patent is *not* removably *attached to* the playpen structure. Rather (and as discussed above), the cover simply envelops the playpen without attaching.

Respecting claim 8, the instant invention comprises a portable enclosure including a plurality of panel elements and a flexible covering element removably securable to, and adapted to surround and cover substantially all of, the panel elements. Again, the teaching of the '462 patent is not anticipatory.

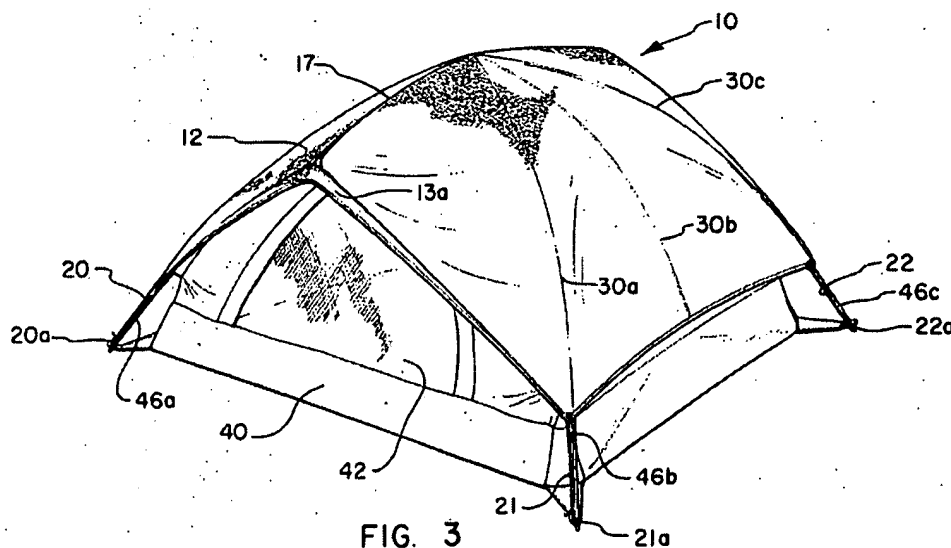
The examiner argues that the roof (see **FIG. 2**, reference numeral 30) corresponds to the claimed covering element. However, the roof (30) of the '462 patent, as clearly shown in **FIG. 2**, reproduced below, covers only the very top portion of the playpen structure; it does not surround and cover substantially all of that structure, such as is the case with the instant invention.



Even if the examiner were to revert, in arguing anticipation of claim 8, to the basis asserted for rejecting claim 1 (i.e., arguing correspondence between the claimed covering element and the cover (40) of the '462 patent), such a rejection would necessarily fail to satisfy the anticipation standard for the reasons already articulated, including the want of any means for removably securing the cover (40) to the playpen.

Respecting the rejection of claims 1 and 3-8 over the '718 patent, Applicant likewise disagrees. Again, the examiner's assertion that the presence of a visible pattern on the rain fly of the '718 patent is not well taken. There has been **no** showing that such a visible pattern is "necessarily present in the thing described in the reference, and...so recognized by persons of ordinary skill." In re Robertson, 49 USPQ2d 1949 (Fed. Cir. 1999). Respectfully, the examiner cannot rely on unsupported assertions of inherency to make up for deficiencies in the reference teachings.

The foregoing notwithstanding, there exists **no** correspondence between the rain fly (10) of the '718 patent and the invention of either of claims 1 or 8, both of which claims call for a covering which covers substantially all of the underlying structure. The rain fly (10) of the Nichols patent, by contrast, leaves significant portions of the underlying tent exposed, as best shown in **FIG. 3**, reproduced below:



And as to claim 1 in particular, the same recites that the covering is non self-supporting, which limitation is plainly not satisfied by the rain fly of the '718 patent, which is expressly taught to include a spar member. *See, e.g.*, claim 1 of the '718 patent.

Relative to the invention of claim 6, which comprehends a portable enclosure comprising a collapsible frame substantially surrounded by a non self-supporting flexible covering to thereby define a walled enclosure, it is beyond peradventure that the rain fly of the '718 patent is not self-supporting, and further fails to define a walled enclosure.

Turning then to the examiner's rejection of claims 1-5 over the '176 patent, it is clear that that reference teaches only a *single* reversible cover for trucks. This stands in clear distinction from the invention of claims 1-5, which comprehends an improvement in portable enclosures of the type having a support element and an enclosure exterior surface, the improvement comprising a separate covering removably attachable to said *enclosure exterior surface*.

Lastly, with respect to the rejection of claims 6-7 (which comprehend a portable enclosure having a collapsible frame and a removable covering) over the Jones patent, the examiner's anticipation argument is not well taken. More specifically, the examiner argues that collapsibility of the frame members which support the reversible truck cover of the '176 patent is "well known," Official Action, p. 3, even though such collapsibility is *nowhere* taught in the reference. However, the standard for anticipation is not what is alleged to be well-known in the art. Rather, anticipation "requires the presence in a single prior art disclosure of each and every element of a claimed invention...." Lewmar Marine,

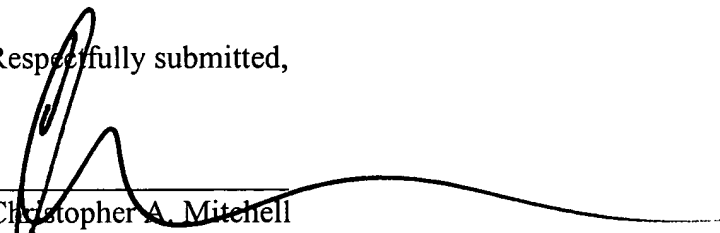
Inc. v. Barient, Inc., 3 USPQ2d 1766 (Fed. Cir. 1987); *see also* RCA Corp. v. Applied Digital Data Systems, Inc., 221 USPQ 385 (Fed. Cir. 1984).

In light of the above, Applicant respectfully submits that the rejections as to the dependent claims 2-5, and 7 are rendered moot. Nevertheless, Applicant notes that the art of record, taken alone or in any permissible combination, fails to either anticipate or render obvious the invention of these claims. Should the examiner maintain the rejections to the claims, Applicant reserves the right to place the claims in allowable form, argue the patentability thereof, and/or appeal such rejection.

III. Conclusion

In view of the foregoing, Applicant submits that the claims are in condition for immediate allowance. Of course, the examiner is invited to contact Applicant's undersigned counsel at (734) 662-0270 if he should have any questions respecting this paper, or if a telephonic interview might otherwise expedite the prosecution of this case.

Respectfully submitted,



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